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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,837	07/22/2005	Manfred Piontek	2619-0038WOUS	8927

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MCCORMICK, PAULDING & HUBER LLP
CITY PLACE II
185 ASYLUM STREET
HARTFORD, CT 06103

EXAMINER

PATEL, TARLA R

ART UNIT	PAPER NUMBER
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3772

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02/27/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/534,837	Applicant(s) PIONTEK, MANFRED	
	Examiner TARLA R. PATEL	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/21/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 11/21/07. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Drawings

3. The drawings were received on 11/21/07 and acknowledged. These drawings are entered. In response to the new drawing filed on 11/21/07, the drawing objection previously presented has been withdrawn.

Specification

4. Applicant's submission noting the correct specification that was received on 5/13/05 is acknowledged; please note said specification was previously considered. As noted with respect to the drawing withdrawn

objection above, in response to the new drawings filed on 11/21/07, the objection previously presented has been withdrawn.

Claim Objections

5. The claim objection has been withdrawn in light of previously received specification. As noted with respect to the drawing and specification withdrawn objections above, in response to the new drawings filed on 11/21/07, the objection previously presented has been withdrawn.

Claim Rejections - 35 USC § 112

6. The previously presented 112 rejection to claims 5-7 has been withdrawn; further, the rejection should have stated that the claim subject matter was not shown in drawing(s), rather than not described in specification. As noted above, the drawing objection has been withdrawn after submission of drawing on 11/21/07.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 1 recites the limitation "rest shell" in the claim; there is insufficient antecedent basis for this limitation in the claim. Further, this limitation is not clear to the examiner whether applicant is referring to an additional structure that is a rest shell to support shell or cushions. For purposes of examination, the examiner has interpreted the limitation "a rest shell" as the cushions of applicant's claimed invention.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

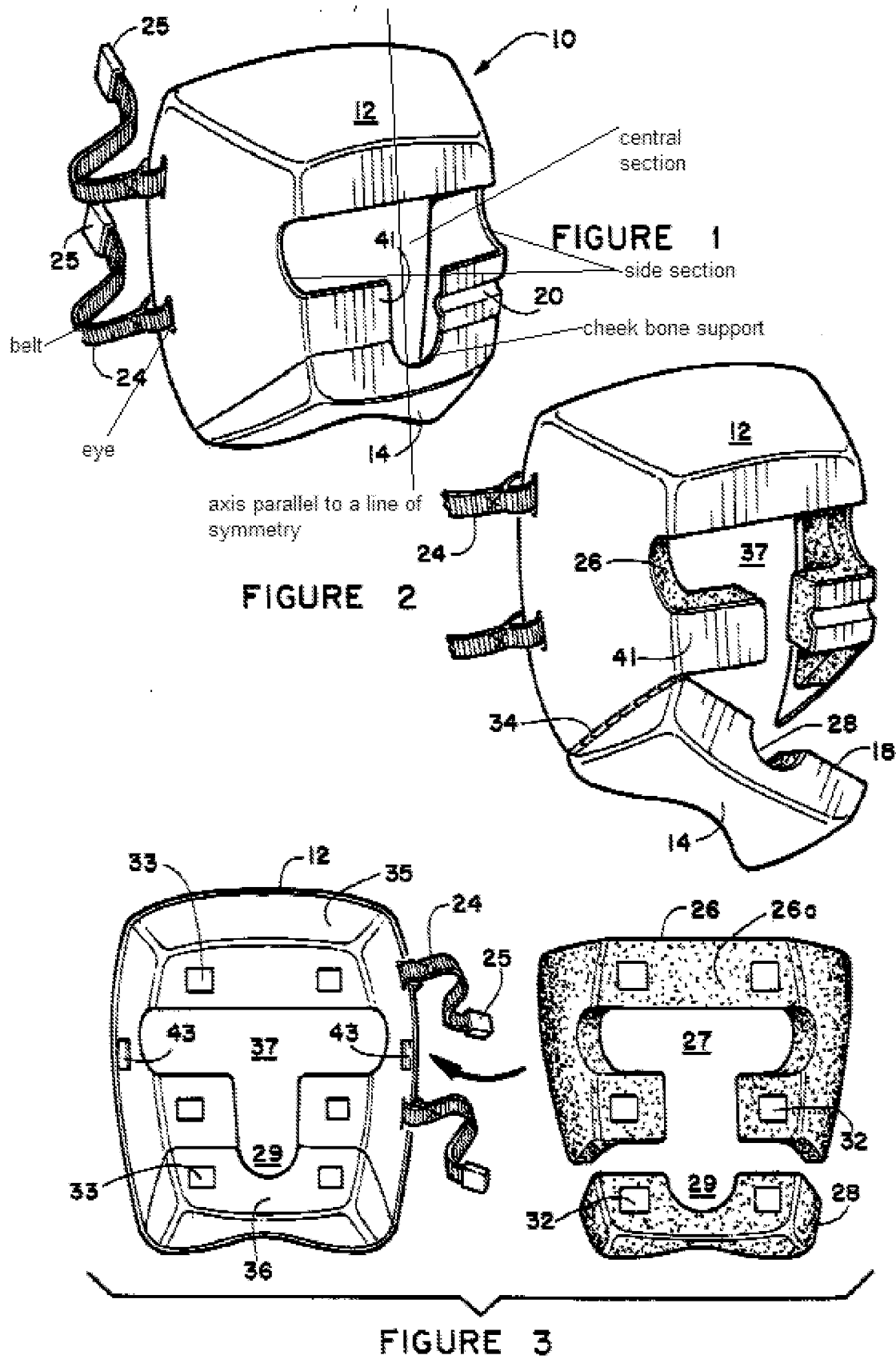
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 3, 4, 7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Mazzei (6,112,333).

Mazzei disclose a headrest for a patient-bearing surface with rigid-support shell (12, column 5 lines 8-12) and a cushion (26,28) releasably connectable (column 6 lines 36-59) with the rest shell, characterized that the rest shell has an approximately horseshoe-shaped (see fig 1) form with

a central section (37) for supporting the rear or forehead of a head, which central section (37) has a support surface of approximately spherical shell shape, and with two side sections conform at least approximately to a common cylindrical surface whose axis runs parallel to a line of symmetry of the head support running between the side sections with there being a cheekbone (14) on each of the side sections which cheekbone support projects in the direction toward the other side section (see figure below).



With respect to claim 3, the rest shell is made of plastic (column 5 lines 8-14).

With respect to claim 4, the support cushion on its side facing the rest shell carries at least two stick pins (16) designed for insertion into through going bores (18) in the rest shell.

With respect to claim 7, the headrest or each partial rest (see fig 5) is connected to fastening block (51) for holding it to a profiled rail (53).

With respect to claim 8, the headrest on the outer edge of each side section is formed an eye (hole, where the belt 24 is extends from the head rest 12) for the fastening of a belt (24) for fixing the head of a patient to the headrest.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 5-6 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Mazzei (6,112,333) in view of Mazzei et al. (6,490,737).

Mazzei substantially discloses the invention, see rejection to claims 1, 3-4 and 7-8 above; however, Mazzei '333 does not disclose that the stick pins each have a cylindrical shaft with cylindrical shaft has an elastically resilient band with an external diameter slightly larger than the diameter of bores and headrest is divided into two mirror image similar partial supports along its line of symmetry.

However, Mazzei et al. '737 does teach a device for protecting a patient's head wherein the device includes stick pins as part of a helmet, each pin having a cylindrical shaft with cylindrical shaft (61, see fig 7) and each has an elastically resilient band with an external diameter slightly larger than the diameter of bores (see fig 7) and device is divided into two mirror image similar partial supports along its line of symmetry (see fig 7, column 12 lines 27-30). At the time of the invention was made, it would have been obvious to one having ordinary skill in to use the teaching of the stick pins each have a cylindrical shaft with cylindrical shaft has an elastically resilient band with an external diameter slightly larger than the diameter of bores and headrest is divided into two mirror image similar partial supports along its line of symmetry to device of Mazzei '333, as taught by Mazzei et al.

'37 to have the flexibility in adjust height of headrest when user laying face down and accommodating the various face size user for the headrest.

Response to Arguments

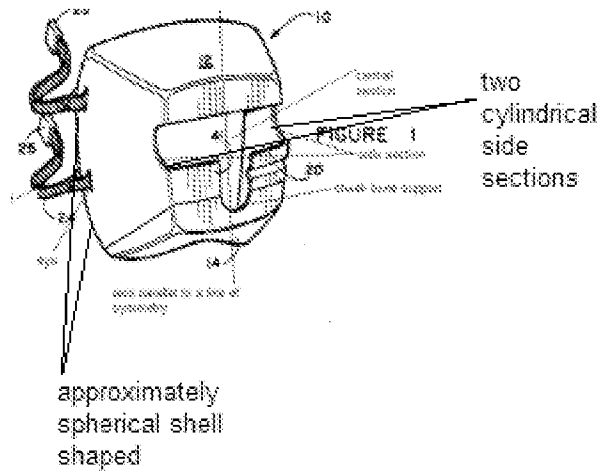
12. Applicant's arguments filed 11/21/07 have been fully considered but they are not persuasive.

13. With respect to applicant's argument that Mazzei '333 does not discloses a headrest, but rather discloses a helmet having horseshoe-shaped form, to that the examiner respectfully disagrees. Applicant's claimed invention recites an "approximately horseshoe shaped" headrest, which broadly interpreted by the examiner, is read to be equivalent to the helmet of Mazzei, since the helmet of Mazzei and the headrest of applicant have similar structure and both perform the same function, that of protecting the head of a person wearing the device. Also, with respect to the term "approximately horseshoe shaped" defining the headrest, the examiner would like to point out, as discussed in the rejection and illustrated on the figures incorporated into said rejection above, Mazzei discloses an approximately horseshoe shaped central section. Further, to the argument to Mazzei's invention being a helmet, applicant's head rest

does not set forth any specific structural differences as claimed from the helmet of Mazzei and both provide support or protection to the head of the patient or person wearing the devices.

14. Further, applicant argues that the helmet of Mazzei '333 does not disclose a support surface of an approximately spherical shell shape with two cylindrical side sections. A broad interpretation of "approximately spherical shell shaped" has been interpreted to be met by the Mazzei reference since the disclosed helmet can be comprised of two portions that are an approximately spherical shell shaped central sections (see illustrated figure represented below).

15. In view of these arguments, the claims stand rejected.



Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARLA R. PATEL whose telephone number is (571)272-3143. The examiner can normally be reached on M-T 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP
/Tarla R Patel/
Examiner, Art Unit 3772

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772